



Contract Number

21-24

SAP Number

4400015951

Department of Risk Management

Table with contract details: Department Contract Representative (LeAnna Williams), Telephone Number (909-386-8621), Contractor (Elizabeth M. Kessel, Inc.), Contractor Representative (Elizabeth M. Kessel), Telephone Number (213-383-2800), Contract Term (04/15/2021 through 04/14/2026), Original Contract Amount, Amendment Amount, Total Contract Amount (Per Fee Schedule), Cost Center (Various).

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

The County of San Bernardino – Department of Risk Management (hereinafter referred to as County) and Elizabeth M. Kessel, Inc. DBA Kessel & Megrabyan (hereinafter referred to as Contractor) are parties to this agreement.

WHEREAS, County is self-insured for its liability and workers' compensation claims and self-administers its own and other public entity programs, and;

WHEREAS, Contractor is professionally qualified and competent in public liability law to defend County as required by law for all claims or actions filed against the County, Board Governed Special Districts, County Service Areas or other public entities.

NOW, THEREFORE, in consideration of the remuneration hereinafter set forth, Contractor agrees to provide the following services for County, Board Governed Special Districts, County Service Areas or other public entities, under the following terms and conditions:

I. CONTRACTOR GENERAL RESPONSIBILITIES

Unless otherwise noted, the assigned Contractor shall be the primary legal representative of the County and its employees in the matter assigned and shall be responsible for the proper handling of the file and complying

with all court or other dates, responding promptly to requests for information, e-discovery, correspondence, etc.

All assignments are made by Risk Management and/or County Counsel. The County will identify appropriate representatives for the assignment. Direct communication with other County employees, other than those already identified by the County, will be discussed with the County prior to contact. Open and continuous communication between Contractor and the County is essential to ensuring efficient Contractor work and the best possible outcome; and as such, the County shall be fully apprised and kept current on all developments and participate in all decisions concerning legal tactics and strategy. The County shall be provided with copies of all legal opinions and advice, and significant correspondence. All significant submissions shall be submitted to the County electronically in time for thorough review and discussion before any court or other deadline. It is expected that Contractor will maintain the highest ethical and professional standards on behalf of the County and will establish and maintain cordial and professional working relations with opposing counsel, the judiciary, mediators, third parties witnesses, and all others involved in the matter.

Contractor will not respond to any media requests related to any assignments, but will instead notify the County of any such requests or other media exposures.

Contracted firm will defend all claims or actions, including prejudgment and post-judgment proceedings at the trial and appellate court level, referred by the County and arising from alleged legal liability of the following entities:

- San Bernardino County
- San Bernardino County Flood Control District
- San Bernardino County Special Districts and County Service Areas.

1. Contractor shall have a duty to immediately report any case referred by County, which Contractor, in their sole discretion, determine to be a conflict of interest. Contractor may decline to represent County in any such case.
2. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County without first obtaining a written waiver and consent from the County Counsel. Any request for a conflict waiver must be made in writing to County Counsel.
3. Cases assigned to Contractor by County shall be accepted with the understanding that professional fees shall be billed on a monthly basis and paid at the following hourly rates:
 - All Cases
 - \$265 – Partners
 - \$245 – Associates
 - \$115 – Law Clerks / Paralegals
4. Rate Guarantee and Escalation:
All rates will be considered firm for the entire period of the contract, rate escalation adjustments will not be considered during the contract period.
5. Reporting Requirements, Planning and Budget:
Contractor shall report on all significant developments as they occur, including emerging facts, shifting claims, or strategies, and other changes in the file. Report letters will be submitted electronically and be directed to the County, unless instructed otherwise by the County. Caution should be exercised when sending emails to ensure only appropriate individuals are included to avoid inadvertent waiver of attorney-client privilege.

A budget is required for each matter in which Contractor has been retained. The budget is intended to be an estimate of the scope, cost and duration of the matter, and used as a planning tool by the County. Amended or corrected budgets should be provided immediately to the County if the Contractor becomes aware of changes in the estimation of matter costs and fees.

a. Required Reports

- Acknowledge letter as soon as file is received, identifying the attorney and other personnel handling the matter;

- An Initial Case Evaluation Plan within 60 days, including a description of the case, an estimated timeline for disposition, and discussion of early disposition potential;
- An Initial Budget within the first 60 days for litigated files or within 45 days for non-litigated matters;
- A revised budget as necessary;
- A written Status Report every 30 days or sooner if developments occur;
- A Counsel Evaluation at least 72 hours before any conference call or meeting where settlement authority will be evaluated

b. Initial Case Evaluation Plan

- County claim number
- Identify personnel responsible for handling the matter, not to exceed two attorneys and one paralegal
- Summary of Facts – Briefly describe, based on review of records, discussions with relevant personnel and witness interviews;
 - Any relevant history of the file;
 - The incident that forms the subject of the file;
 - Information about other parties
 - Any applicable contracts or affiliation agreements.
- Liability – Provide an opinion on potential liability against or in favor of the County (if any)
- Co-defendant liability
- Damages – Provide any known information on potential damages (if any)
- Plaintiff's contention
- Plaintiff comparative
- Potential for subrogation
- Early Disposition Potential (if any)
- Verdict Range
- Plan and Timeline – Describe anticipated handling of the file, including an estimated timeline. If any out of the ordinary expenses, such as travel outside of the local area (e.g. out of state or Northern California) or expensive expert or consultant fees are anticipated, Contractor should include an estimate of such fees and/or costs.
- Identify consultants and potential experts by name, expertise, or specialty, sub-specialty (if any)
- Settlement value and the basis used to arrive at this value
- Proposed litigation and case management strategies.
- Witnesses needed. (Pre-approval by Risk Management Representative required prior to notification).

The Plan shall be reviewed and updated no less than every six (6) months (or such time as mutually agreed), and any time the Contractor or the County determines that a significant change in the Plan should be made.

If the actual litigation costs exceed the initial budget projections, then an updated budget should be submitted with an explanation, explaining the change in the budget. If a case is heading toward trial, a separate trial budget should also be prepared. Prior to **all** mediations, mandatory settlement conferences and trials, the appropriate case evaluation, mediation brief or claim summary should be submitted at least 30 days prior to the mediation or settlement conference. A meeting with the County to discuss any upcoming mediation or settlement conference should take place at least 30 days prior unless it is deemed not necessary by the County. Pre-Trial reports and meetings should take place at least 60 days before trial.

c. Budget Reports

An Initial Budget is required to be submitted to the County within 60 days of assignment for litigated matters and within 45 days of assignment for non-litigated matters. No invoices will be paid until the initial budget is received. The County must approve the Initial Budget. If estimated fees and/or costs change, Contractor must discuss a modified budget with the County and provide an updated budget report before incurring any additional expenses. If Contractor invoices exceed the current budget estimate amount, an updated budget will be required before any new invoices will be paid.

The budget will note the County claim number, provide a brief overview of the case, and estimate costs and attorneys' fees for the matter.

d. Written Status Reports

Status Reports shall be submitted along with the billing invoice. In addition to the County claim number and a brief overview of the file, the following headers will also be included:

- Report on activity since the last status report (use sub-headings, e.g. "Interview with Witness X, Potential," "Potential Conflicts of Interest;" etc.)
- Summary and Analysis – Briefly summarize the reported activity and analyze its impact on the matter.

Status Reports shall only include new developments since the last Status Reports. Overly lengthy reports including previously reported information will not be accepted or invoiced for.

e. Contractor Evaluation

Contractor Evaluation is designed to give the reader the best and most-up-to-date information on a claim prior to any voluntary or mandatory settlement meeting, conference call or mediation. The report will be signed by the assigned attorney and submitted to the County at least 72 hours in advance of the scheduled event. In cases where there is not a scheduled event providing opportunity for a Contractor Evaluation, the report must be submitted to the County within 75 hours following the event.

In addition to a brief overview, the following shall also be included:

- Factual Background – Provide a summary of the facts pertinent to the evaluation.
- Parties – Identify each party, including your opinion as to the strength of that party's position.
- County Parties – Identify all County employees involved in the matter, including your opinion as to the strength of that person as a witness.
- Liability – Present a thorough discussion of each party's position, including a discussion of all claims asserted and the strengths and weaknesses of those claims.
- Damages – Identify and fully discuss all monetary and non-monetary damages asserted by each party.
- Attorneys' Fees and Costs – For any statutory claims provide an estimated calculation of attorneys' fees and costs to date.
- Percipient Witnesses – Identify each percipient witness, and for each, state whether the witness is currently or has been previously affiliated with the County, as well as your opinion as to how the witness will be viewed.
- Expert Witnesses/Consultants – Describe the opinions of the experts and consultants for all parties. If experts and consultants have been disclosed, describe any anticipated opinions.
- Settlement Discussions/Demands – Report on any settlement discussions with opposing parties. Include any demands or statements by the attorney for any party with reference to case value.
- Case Evaluation – Summarize overall position and provide recommendations for settlement and/or continued handling of the matter. A settlement range may be

recommended with a maximum recommended settlement figure. Also discuss the likelihood that the opposing party will prevail or the chances for success of the County. Provide information on similar cases or settlements. Elaborate on the rationale for recommendations if necessary or useful. If settlement is appropriate, identify any obstacles to settlement and suggest a strategy for negotiations and addressing any obstacles.

- Anticipated fees/costs through the conclusion of the matter
- Contracted firms must obtain the approval from the County prior to moving forward with preparing and filing Cross-Complaints and Motions for Summary Judgment (MSJ). The recommendation should include the estimated cost to prepare the MSJ along with the County's chances of prevailing.
- Contracted firms must obtain the approval of County Counsel prior to filing any appeal on behalf of the County of San Bernardino.
- Conclusion – Include if additional work needs to be done or you have additional recommendations not included previously in the report. Also state anticipated dates of completion or time constraints relevant to such additional work recommendations.

6. Settlements

Where liability is apparent, whether in favor of or against the County (including exposure to statutory attorneys' fees), early settlement frequently is the recommended course. Contractor is responsible for assessing liability exposure as soon as practicable and for recommending timely resolution strategies.

a. Settlement Demands

All settlement demands and offers to mediate must be immediately reported to the County.

b. Settlement Authority

- Contractor shall not enter into negotiation, agreement or binding settlement without first obtaining appropriate prior authorization from the County. Proposals for negotiations shall be made to the County, who will coordinate a discussion with appropriate personnel of the County. **The Contractor Evaluation must be provided to all discussion participants at least 72 hours before the scheduled discussion.**
- Settlement authority may be provided during the discussion, but any settlement is contingent on approval by the County, and this **shall** be communicated during any settlement negotiations. In cases involving statutory attorneys' fees, all settlement offers including statutory offers to compromise should be structured to resolve all claims including attorneys' fees.

Contractor is encouraged to explore the settlement of cases informally with opposing counsel after obtaining the appropriate authorization. The County also encourages mediations and participation in voluntary settlement in appropriate cases. Approval to mediate a case must be given by the County to Contractor. A representative of the County will be present at all mediations. If a proposed settlement is reached, Contractor shall emphasize that recommendations for all settlements are subject to approval by the County and/or the Board of Supervisors.

Contractor is responsible for assuring that the Settlement Agreement and Release ("Release") is accurate and legally enforceable. Upon execution of the Release by the opposing party and his/her/its counsel, the same shall be mailed by Contractor to the County to secure the necessary County signatures.

7. Contractor agrees that all work product including motions, writs, exposure identification, legal research, opinion letters, etc., may be copied and provided by the County to attorneys either employed or retained by the County and/or County's insurance carrier. This provision should not be construed as a waiver of the attorney/client privilege.

8. Contractor agrees to utilize the services of County contracted vendors such as court reporting agencies for all court reporting work on County cases; photocopy firms for document reproduction and investigative firms. To assist the Contractor in doing the work, the County shall provide lists of approved vendors. Only these contracted vendors shall be used. The County will also assist in retaining appropriate defense experts. Due to the County's contracting policy, firms are required to advance the cost of retained experts and will be reimbursed by the County as reimbursable expert fees.
9. Contractor agrees and understands that the County is paying on an hourly basis and will not pay for items that are charged on a "Value Billing" basis. For purposes of this Agreement, value billing is defined as billing time or fees for a task on any basis other than the actual time that was worked by the biller, measured in tenths of an hour.
10. Contractor agrees and understands that the Contractor is responsible for any expenses resulting from the errors or omissions made by Contractor. The County will not be responsible or invoiced for such expenses.
11. Contractor shall notify County of claims with potential settlement value over \$100,000 as soon as it becomes evident that the case does have merit or may result in costs to the County of over \$100,000.
12. Contractor agrees that all Risk Management and involved Department employees are public servants and do not require client development. Contractor, therefore, agrees not to charge the County for any client development costs.
13. Upon case resolution, Contractor agrees to submit final case analysis and reasons for disposition to County. This submission will include copies of pertinent documents evidencing the disposition.
14. Should either party choose to terminate this contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated, therefore, on the same terms and conditions as hereinbefore set forth until the conclusion of such case. However, the County retains the option of withdrawing any pending cases from further handling by Contractor and shall compensate Contractor for legal services provided to date of termination of this contract. Contractor will promptly return any cases that are withdrawn or transferred including any and all case files, work product and work in progress that have been generated.
15. Contractor shall not undertake any action(s), without Risk Management's concurrence, which could foreseeably result in Court-imposed sanction(s). The policy of the County is not to pay sanction(s) unless Risk Management intentionally caused the underlying action(s) and/or fully understood that sanctions could result from those actions.
16. This contract is with the Contractor named above; should the Contractor experience a name change during the contract period that requires any official name change, necessitating a new contract signature and/or Board of Supervisors approval, the Contractor shall be charged time and expense for such changes. Payment for such changes shall be paid in advance of the contract modification.
17. Administrative Services
 - a. Projects are assigned to specific Contractors according to vendor's expertise as projects are received from various County Departments.
 - b. There are no guarantees of specific number of hour blocks.
 - c. Contractors must possess required license when contract is awarded.
18. Performance Standards

Basic performance should adhere to the rules regulating admission to practice of law in California by Title 4, Division 1 of the rules of the State Bar of California, effective September 1, 2008.
19. Penalties
 - a. Penalties caused by the Contractor will be paid by the firm
 - b. Penalties assessed will be reviewed by the Director of Risk Management and Principal Assistant County Counsel.
 - c. If the County Adjuster is at fault or the adjuster's delay caused the penalty, the Contractor would not be expected to pay the penalty.
 - d. If the penalty was clearly caused by the Contractor, then the firm will be billed for the penalty and expected to pay the penalty.
 - e. The Director of Risk Management and Principal Assistant County Counsel will resolve appeals.
20. Monitoring of Service/Quality
 - a. Provide periodic written status reports in accordance with the reporting provisions of the contract and orally brief County officials on case status and strategy.

- b. Agree to comply with all of the County's Contractual Terms and Conditions as shown in Section X of this RFP.

21. Digital Media and Correspondence

The County's, Department of Risk Management may require the Contractor to submit any or all correspondence, reporting and media to be transmitted electronically to the County representative.

22. Confidentiality

All correspondence, communications and other applicable documents shall be conspicuously marked "Confidential - Attorney/Client Privilege".

23. Legal Billing Procedures

Legal fees and related expenses represent a significant cost to the County. The County considers efficiency in delivery of legal services as a critical component of successful legal representation and closely scrutinizes the invoices of all counsel. The County reserves the right to require backup documents to support charges and/or require that they be submitted in a format that permits the invoice information to be electronically analyzed. By representing the County, Contractor agrees to comply with the request and at the firm's expense. Payment of any invoice by the County, at any time, does not constitute a waiver of the County's rights to subsequently question, dispute, obtain reimbursement of, compromise or request repayment or future credit, or any bill or invoice previously paid. **Invoices received by the County not including a Status Report will not be paid until the Status Report is received.**

a. Billing Submissions

Invoices for counsel fees and expenses shall be submitted monthly and within 30 days of the end of the billing period. All invoices for work performed during the fiscal year (7/1 – 6/30) must be received by the County by June 20th. Final invoices shall be received by the County no later than 30 days from receipt of the conformed copy of the settlement agreement. If the final bill cannot be submitted within 30 days, Contractor must advise the County as soon as practicable. It is the Contractor's responsibility to obtain all outstanding invoices from outside vendors including consultants and experts, before submitting the final bill. Unless due to exigent circumstances, bills submitted after the final bill will not be paid. Expenses must be substantiated with receipts.

b. Billing Format

Invoices shall identify and describe each item of service in sufficient detail to identify the persons involved and the work performed by date and time billed and the person providing the services (including the hourly rate for each person). Statements must accurately itemize in detail all work performed on a matter in a task or activity based format. Attorneys and paralegals are to bill actual time incurred. If an activity warrants a minimum billing entry, it should not exceed 1/10th (.10) of an hour. Minimum charges for any activity in any amount above 1/10th (.10) of an hour are not acceptable.

Each bill must include the following:

- County claim number;
- Law firm and address;
- Date of the invoice;
- Name of the assigned counsel;
- Name of the involved County department;
- Law firm tax identification number;
- Plaintiff name(s);
- Date(s) of the task and/or activity;
- Detailed description of the task and/or activity in order for the County to determine the exact name, purpose and necessity of the expense;
- Actual time spent, in increments no greater than 1/10th of an hour for each entry or task;
- Summary at the end of the bill subtotaling number of hours for each specific billing rate and the name and initials of each attorney and paralegal;
- Summary at the end of the bill subtotaling fees, costs, consultants, and experts.
- Each billing entry must indicate the name or initials of the timekeeper who performed the work, the date the work was performed, the hours billed, a description of the services

performed, and the total amount billed for that entry. Narrative and/or block billing is not permitted;

- Final bills should be identified as such;
- Bills must reflect activity for only one case or matter;
- Billing entries on each invoice are to be structured chronologically (in order of occurrence) and not sub-divided by individual or task. Each entry must include the related work product.
- If numerous tasks are undertaken in one day, each task must be separately identified with a specified time for performing the task and detailed description, e.g., a telephone call, a meeting, or legal research.
- Telephone calls must specify the participants and the subject matter discussed.
- Travel costs should identify the person who traveled and reason for the travel.

The following generic descriptions will not be accepted without proper support and justification:

- Attention to matter;
- Review case and issues;
- Conference;
- Review correspondence/documents;
- Telephone calls;
- Meeting;
- Trial preparation;
- Motion work;
- Work on project or case;
- Work on file;
- Prepare for meeting;
- Work on discovery;
- Research;
- Any other nondescript activity.

Overhead charges for vendor invoices (e.g., experts, consultants, mediators, etc.) will not be permitted.

c. Maximum Allowable Charges

The following is provided regarding maximum allowable charges:

- The County will only pay the actual costs for reasonable expenses without any premiums or markups.
- Contractor may bill for up to three (3) hours of research per case. Contractor will contact the County if more extensive research is necessary.
- Telephone calls – actual long distance charges only.
- FAX – For actual long distance charges only. No charge for incoming faxes

d. Travel Charges

- Contractor must obtain approval from the County prior to attending “out-of-town” (out-of-state or travel between Southern and Northern California) matter-related events.
- Mileage will be reimbursed at the current IRS rate.
- Air travel will be limited to coach or economy rate.
- In the event out-of-town overnight stays are required, meals, hotel rates, and other qualified incidentals will be reimbursed in accordance to the County’s travel policy. Incidentals such as movies, alcohol, and entertainment will not be reimbursed by the County.
- Travel shall be prorated if travel includes time spent on non-County business.
- Travel billing shall indicate the actual round trip travel time, reduced by the usual commuting time from home to office or vice versa.

e. Disallowable Charges

The County considers the following to be overhead and therefore, part of the hourly rate and will not be reimbursed:

- Telephone calls and all cellular phone charges.
- Per-page fax charges.

- Routine postage. Any necessary extraordinary postage charges (certified mail, overnight service, or oversized packages) must be delineated on the bill with an explanation of the nature and purpose of the charge. Any postage charges not explained will not be reimbursed.
- File opening, file organization, or other administrative charges.
- Books, magazines, subscriptions, or library charges without prior authorization from the County.
- Intra-office conferences between members of the firm, including assigning files or tasks to members of the firm.
- Case administration (directing associates, preparing or reviewing bills, etc.).
- Clerical tasks (transcription, pulling files, labeling documents for production, faxing, etc.).

The County considers the following items to be inappropriate and will not reimburse for:

- Unauthorized meals, hotel stays, facility uses, and out-of-town expenses.
- Entertainment.
- Staff overtime charges.
- Routine or elementary legal research, including issues considered to be common knowledge among reasonably experienced counsel in the local jurisdiction (local rules, laws, motions for summary judgement, special verdict forms, etc.).
- Lexis/NEXIS and other database legal research search costs.
- Billing more than once for documents which are reproduced for multiple witnesses.
- Routine file review and learning time to get up to speed or in-firm transfer of file reviews.
- Staffing inefficiencies caused by the unavailability of the firm's personnel.
- Unnecessary or premature summaries of medical records.
- All work customarily performed by secretaries and other administrative personnel.
- Reviewing or analyzing the firm's conflict of interest issues.
- Errors made by Contractor.
- Subscription services.
- Work performed by an attorney not on approved defense panel list.
- Expenses/disbursements without supporting invoices.
- Responding to requests from County auditors.

f. Level of Work Performed

Firm staffing on all cases will be as lean as possible. Two or more billers should not be performing the same task or activity on a case when one biller is sufficient. Only one attorney is permitted to attend hearings, discovery matters, meetings or any other event unless a second attorney or paralegal are approved by Risk Management. Unnecessary duplication of work is to be avoided. Without prior approval from the County, there will be no more than two (2) attorneys and one (1) paralegal doing most of the work and billing most of the time on a case. These personnel must be identified on the initial evaluation of the matter. On occasion, firm personnel may have to work on a case due to vacations, illnesses, etc.; however, this is the exception, not the rule.

All billers at your firm working on County cases must be members, full-time employees, or of counsel attorneys at Contractor's firm. The County will not pay for "learning" time or "orientation" time (including, but not limited to new or inexperienced attorneys), such time will be done at the Contractor's expense.

Billing of more than **7 hours in a given day** or more than **150 hours per month** by a single biller must be justified in detail.

24. Audits

The County retains the right to audit all invoices or files that are or have been the subject matter of any billing in the past. The audit will require the firm to produce any and all documentation that would support the billing submitted by the firm. The firm will produce any individual that has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings.

Contractor acknowledges that the County may use in-house staff, an outside auditing service, or other service or company as the County deems appropriate.

II. TERM OF CONTRACT

1. This contract is effective as of April 15, 2021 and expires on April 14, 2026 unless terminated earlier as provided within this contract. If contract negotiations for renewals are delayed for reasons beyond the control of the Contractor, the contract shall automatically be extended under the same terms and conditions until terminated by written notice by either party or by execution of a new contract.
2. Notice of Cancellation: The contract may be terminated by any party for any reason upon thirty (30) day written notice.
3. This is a non-exclusive contract and the County may, if necessary, retain other and/or additional public liability attorney service vendors at its sole discretion.

III. INSTRUCTIONAL AND TRAINING SERVICES

Contractor agrees to undertake a planned effort to educate, and make available, learning opportunities to Risk Management Staff and other designated County staff on topics related to the legal defense of public liability claims. Contractor shall provide a maximum of four (4) days of instruction per year at the premises of the San Bernardino County Department of Risk Management that may span multiple dates. Manuals or handouts must be provided for all attendees.

IV. CONTRACTOR'S GUARANTEE

Contractor guarantees its services will be satisfactory to the County as specified in the RFP and the contract. If the County is dissatisfied with the Contractor's services, qualifications of its staff, licenses and/or certifications, the County has the right to cancel any contract for service and be relieved of the obligation of continuing with this contract.

V. CONTRACTOR'S NAME AND TAX ID NUMBER

Contractor is required to maintain the same name and Tax ID for the duration of the contract. However, if a change occurs, the Contractor shall notify the County in writing of any change of name or tax identification number within ten (10) business days of the change and should provide a new IRS W9 form and promptly complete and return updated electronic fund transfer forms.

VI. TERMS AND CONDITIONS

A. General

1. Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

2. Contract Exclusivity

This is not an exclusive Contract. San Bernardino County reserves the right to enter into a Contract with other Contractors for the same or similar Services. San Bernardino County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

3. Attorney Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under the Indemnification and Insurance Requirements.

4. Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to the County; or and (c) are not otherwise disqualified from performing the Services under applicable Law. If requested by the County and not in violation of

applicable Law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing services. If requested by the preceding requirements and County, Contractor shall review the results of the background check of each individual to verify that the individual meets Contractor's standards for employment. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for Contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet criteria acceptable to the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

5. Change of Address

Contractor shall notify the San Bernardino County in writing of any change in mailing address within ten (10) business days of the change.

6. Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

7. Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all Laws applicable to the County facilities and/or the provision of the Services, and all additions and modifications to each of subsections (b),(c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor's personnel or may be made available to Contractor or Contractor's personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or Contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

8. Confidentiality

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall execute and comply with the attached Business Associate Agreement (Exhibit I). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for services performed pursuant to Contract.

9. Primary Point of Contact

The Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written notification and acceptance of San Bernardino County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

10. County Representative

The Director of the Department of Risk Management or his/her designee shall represent San Bernardino County in all matters pertaining to the services to be rendered under this Contract,

including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

11. Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, San Bernardino County may make any necessary repairs. Contractor shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from San Bernardino County, as determined at the sole discretion of the County.

12. Debarment and Suspension

The Contractor certifies that neither it nor its principals or subcontractors are presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

13. Drug and Alcohol-Free Workplace

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Contract, Contractor agrees that the Contractor and the Contractor's employees, while performing service for San Bernardino County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of a drug.
- c. Shall not sell, offer, or provide alcohol or a drug to another person. This shall not be applicable to a Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Contractor shall inform all employees that are performing service for San Bernardino County on County property, or using County equipment, of San Bernardino County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for San Bernardino County.

San Bernardino County may terminate for default or breach of this Contract and any other Contract the Contractor has with San Bernardino County, if the Contractor or Contractor's employees are determined by San Bernardino County not to be in compliance with above.

14. Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

15. Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights

Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

16. Environmental Preference

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.

17. Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in San Bernardino County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

18. Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of San Bernardino County in an attempt to secure favorable treatment regarding this Contract.

San Bernardino County, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of San Bernardino County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the San Bernardino County Administrative Office. In the event of a termination under this provision, San Bernardino County is entitled to pursue any available legal remedies.

19. Informal Dispute Resolution

In the event San Bernardino County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

20. Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

21. Licenses, Permits, and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations (e.g. business license, license(s) issued by the State Bar of California). The Contractor shall maintain these licenses, permits, and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and/or certifications may result in immediate termination of this Contract.

22. Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation, or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

23. Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

24. Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by San Bernardino County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

25. Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

26. Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of San Bernardino County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

27. Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within the San Bernardino County requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

- a. Such governmental body does not have and will not have in force any other contract for like purchases.
- b. Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

28. Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

29. Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County. Any provision of this Contract that may appear to give the County any right to direct the Contractor concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the County concerning the end results of the performance.

30. Release of Information

No news releases, advertisements, public announcements or photographs arising out of this Contract or Contractor's relationship with County may be made or used without prior written approval of San Bernardino County.

31. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

32. Subcontracting

Contractor agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the County. Any subcontracting shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain San Bernardino County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the deliverables and/or services to San Bernardino County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by San Bernardino County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Paragraph B of this contract, Section X. All approved subcontractors shall be subject to the provision of this contract applicable to Contractor Personnel, including removal pursuant to subsection A.7 of this contract, Section X.

For any subcontractor, Contractor shall:

- 32.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 32.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 32.3** Include in the subcontractor's subcontract substantially similar terms as are provided in this Contract.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

33. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the deliverables or services provided pursuant to this Contract is served upon Contractor or San Bernardino County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

34. Termination for Convenience

San Bernardino County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary), all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

35. Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

36. Venue

The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

37. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the San Bernardino County. Contractor shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and State Law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by San Bernardino County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

38. Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners,

associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

39. Disclosure of Criminal and Civil Procedures

County reserves the right to request the information described herein from Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

40. Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with San Bernardino County prior to publication.

41. Artwork, Proofs and Negatives

All artwork, proofs and/or negatives in either print or digital format for this product are the property of San Bernardino County. These items must be returned to the County within ten (10) calendar days, upon written notification to the Contractor. In the event of a failure to return the documents, San Bernardino County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

42. Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

43. Errors, Omissions and/or Conflicts

Contractor shall be responsible for the integrity of all design and research studies prepared or approved by the Contractor and should San Bernardino County suffer damages due to errors, omissions, and/or conflicts within such documents, the Contractor shall be responsible to San Bernardino County for costs of all such damages.

44. Successors and Assigns

This Contract shall be binding upon San Bernardino County and Contractor and their respective successors and assigns.

Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Contractor without the prior written consent and approval of San Bernardino County.

Death or Incapacity: If the Contractor transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by San Bernardino County by reason of such termination. If there be more than one Contractor and any one of them die or become incapacitated and the others continue to render the services covered herein, San Bernardino County will make payment to those continuing as though there had been no such death or incapacity and San Bernardino County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Contractor herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Contractor.

45. Fiscal Provisions

- a. Invoices for services provided under this contract will be billed to each claim the services were provided for. Invoicing for services shall not be combined in any way that prevents charging directly to each claim that utilized the services.
- b. The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- c. Contractor shall provide County itemized monthly invoices, in arrears, for services performed under this Contract within twenty (20) days of the end of the previous month. The County shall make payment to Contractor within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.
- d. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall

promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- e. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- f. Costs for Services under the terms of this Contract shall be incurred during the Contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

B. Indemnification and Insurance Requirements

1. Indemnification

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the San Bernardino County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by San Bernardino County on account of any claim except where such indemnification is prohibited by Law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor indemnification obligation applies to San Bernardino County's "active" as well as "passive" negligence but does not apply to San Bernardino County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming San Bernardino County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for San Bernardino County to vicarious liability but shall allow coverage for San Bernardino County to the full extent provided by the policy. Such additional insured coverage shall provide at least as broad coverage and provide for the same limits of coverage to San Bernardino County as provided to the Contractor as the name insured on all such policies of insurance. **Waiver**

of Subrogation Rights

The Contractor shall require the carriers of the required coverages to waive all rights of subrogation against San Bernardino County, its officers, employees, agents, volunteers, Contractors, and Subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against San Bernardino County.

Policies Primary and Non-Contributory

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by San Bernardino County.

Severability of Interests

Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the Contractor and San Bernardino County or between the San Bernardino County and any other insured or additional insured under the policy.

Proof of Coverage

The Contractor shall furnish Certificates of Insurance to San Bernardino County's Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, San Bernardino County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by San Bernardino County will be promptly reimbursed by the Contractor or County payments to the Contractor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

Insurance Review

Insurance requirements are subject to periodic review by San Bernardino County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of San Bernardino County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against San Bernardino County, inflation, or any other item reasonably related to the San Bernardino County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of San Bernardino County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of San Bernardino County.

2. Insurance Specifications

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contracted services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits, covering all persons, including volunteers, providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the San Bernardino County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance

Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment
- b. Products and completed operations
- c. Broad form property damage (including completed operations)
- d. Explosion, collapse and underground hazards
- e. Personal Injury
- f. Contractual liability
- g. \$2,000,000 general aggregate limit

Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Contractor is transporting one or more non-employee passengers in performance of services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Professional Services Requirements

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

Or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

Or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Contract completion.

Cyber Liability Insurance

Contractor shall maintain Cyber Liability Insurance coverage with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, and extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

C. Right to Monitor and Audit

1. Right to Monitor

San Bernardino County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of Services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with San Bernardino County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by San Bernardino County. Contractor shall repay to San Bernardino County within thirty (30) days of receipt of audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

2. Records

Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Contract.

All records relating to the Contractor's personnel, contractors, subcontractors, service/scope of work and expenses pertaining to this Contract shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by San Bernardino County's representatives for a period of three years after final payment under the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

D. Correction of Performance Deficiencies

1. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Contract, Contractor shall notify San Bernardino County within one (1) working day, in writing and by telephone.
2. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

3. Contractor's Primary Contact and County representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim within ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County representative are not successful in resolving the dispute, negotiations shall be conducted by the County Executive Office, or designee, and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

4. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract.
 - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County;
 - b. Withhold funds pending duration of the breach;
 - c. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery;
 - d. Offset against any monies billed by Contractor but yet unpaid by San Bernardino County;
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, San Bernardino County may proceed with the work in any manner deemed proper by San Bernardino County. The cost to San Bernardino County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.
5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

EXHIBIT I

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Department of Risk Management (hereinafter Covered Entity) and Elizabeth M. Kessel, Inc. DBA Kessel & Megrabyan (hereinafter Business Associate). This agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

- a. **Breach** shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
- b. **Business Associate (BA)** shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
- c. **Covered Entity (CE)** shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
- d. **Designated Record Set** shall have the same meaning given to such term under 45 C.F.R. section 164.501.
- e. **Electronic Protected Health Information (ePHI)** means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
- f. **Individual** shall have the same meaning given to such term under 45 C.F.R. section 160.103.
- g. **Privacy Rule** means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.

- h. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
- i. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
- j. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

II. **Obligations and Activities of BA**

a. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

b. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

c. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

d. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

e. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 1. Date the Breach or suspected Breach occurred;
 2. Date the Breach or suspected Breach was discovered;
 3. Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 4. Number of potentially affected Individual(s) with contact information; and
 5. Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 1. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 2. The unauthorized person who had access to the PHI;
 3. Whether the PHI was actually acquired or viewed; and
 4. The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 1. If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 2. If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

f. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

g. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

h. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

i. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

j. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

k. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

l. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

m. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

n. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

o. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

p. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorneys' fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

q. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

r. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

s. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

III. Obligations of CE

CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:

- i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
- ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.

- iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

IV. General Provisions

a. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

b. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

c. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

d. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

e. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

f. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

g. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

h. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

COUNTY OF SAN BERNARDINO

▶ Curt Hagman
Curt Hagman, Chair, Board of Supervisors

Dated: JAN 05 2021
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By Lynna Monell
Lynna Monell, Clerk of the Board of Supervisors of the County of San Bernardino Deputy



Elizabeth M. Kessel, Inc. dba Kessel & Megrabyan

(Print or type name of corporation, company, contractor, etc.)

By ▶ _____
(Authorized signature - sign in blue ink)

Name Elizabeth M. Kessel
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____
500 S. Grand Ave., Suite 1640

Address _____
Los Angeles, CA 90071

FOR COUNTY USE ONLY

Approved as to Legal Form
▶ Julie A. Surber
Julie A. Surber, County Counsel
Date 12/22/2020

Reviewed for Contract Compliance
▶ _____
Date _____

Reviewed/Approved by Department
LeAnna Williams
LeAnna Williams, Director of Risk Management
Date 12/22/20

WHEREAS, San Bernardino County and Contractor are currently complying with shelter at home orders due to Covid-19, this agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

COUNTY OF SAN BERNARDINO

►

 Curt Hagman, Chairman, Board of Supervisors

Dated: _____
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
 Clerk of the Board of Supervisors
 of the County of San Bernardino

By _____
 Deputy

Elizabeth M. Kessel, Inc. dba Kessel & Megrabyan
 (Print or type name of corporation, company, contractor, etc.)

By ► 
 (Authorized signature - sign in blue ink)

Name ELIZABETH M. KESSEL
 (Print or type name of person signing contract)

Title CEO
 (Print or Type)

Dated: 12-15-20

Address 500 S. Grand Ave., Suite 1640
Los Angeles, CA 90071

FOR COUNTY USE ONLY

Approved as to Legal Form ► Cynthia O'Neill, County Counsel Date _____	Reviewed for Contract Compliance ► _____ Date _____	Reviewed/Approved by Department ► LeAnna Williams, Director of Risk Management Date _____
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